HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.15203 of 1996

Between:

Dwaraboina Chinna Sanjanna … Petitioner

And

The Government of Andhra Pradesh

rep. by its Secretary, Social Welfare Department,

Hyderabad and others.

… Respondents

:: ORDER::

Counsel for the Petitioner: Sri B.D. Maheswar Reddy

Counsel for Respondents Government Pleader for Social Welfare

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June 07, 2006

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Per G.S. Singhvi, CJ

This is a petition for quashing notifications issued by Collector and District Magistrate, Kurnool (respondent No.2) under Sections 4 (1) and 6 of the Land Acquisition Act, 1894 (for short 'the Act') for acquisition of the petitioner's land along with other lands for providing house-sites to Scheduled Castes and weaker sections of the society.

The petitioner is an agriculturist. He owns 2 acres of dry land and 75 cents of wet land in A. Koduru Village, Bandi Atmakur Mandal, Kurnool District. Vide notification dated
25-3-1996 issued under Section 4 (1), which was published in Kurnool District Gazette Extra-ordinary dated 30-3-1996, respondent No.2 proposed acquisition of various parcels of land including 61 cents of land belonging to the petitioner. On the same day, another notification was issued under Section 6 of the Act. Simultaneously, respondent No.2 invoked Section
17 (1) of the Act and directed that possession of the land be taken on the expiry of 15 days from the date of issue of notice under Section 9 (1) of the Act.

The petitioner has challenged the acquisition of his land by asserting that substance of the notifications issued under Section 4 (1) was not published in the locality, as prescribed under the Act, and that there was no justification whatsoever to invoke

the urgency clause contained in Section 17 (4) of the Act. He has also averred that there are actually no beneficiaries who need a house-site or a house in the village and this was the reason why the land acquired earlier is still vacant and has not been allotted to the beneficiaries. Still further, he has averred that the impugned notification cannot be treated as one made for a "public purpose" and, if the government so desires, the government poramboke abutting the village can be allotted to weaker sections of the society.

While admitting the writ petition on 1-8-1996, the learned Single Judge stayed dispossession of the petitioner. That order has subsisted till today. During this period of almost 10 years, the respondents have not chosen to file reply affidavit to controvert the averments contained in the affidavit of the petitioner.

I have heard learned counsel for the parties. Since the respondents have neither filed reply nor any material has been placed on the record of the writ petition to show that substance of the notification issued under Section 4 (1) was published in the locality or the area in which the land is situated, it is reasonable to hold that respondent No.2 had not complied with the mandate of Section 4 (1) of the Act and, on that account, the impugned acquisition is liable to be nullified.

I am also inclined to accept the petitioner's plea that there was no justification for respondent No.2 to invoke the urgency clause contained in Section 17 (4) and thereby dispense with the requirement of holding enquiry under Section 5-A. Every person whose land is acquired for a 'public purpose' is entitled to be heard before finalization of acquisition proceedings. The enquiry contemplated by Section 5-A is mandatory. No doubt, the competent authority can invoke Section 17 (4) and dispense with the enquiry, but this power cannot be exercised in a casual manner. The competent authority is duty bound to consider the relevant factors and form a bona fide opinion that the acquisition of land is emergently required and the same cannot brook any delay. This view of mine is based on the judgment of the Supreme Court in **Union of India v. Mukesh Hans** and **Union of India v. Krishan Lal Arneja**. In the first case, a three Judges Bench of the Supreme Court considered the ambit and scope of Section 17 (1) and (4), referred to some of the judicial precedents on the subject, and laid down the following propositions:

1. Section 17 (4) which is an exception to the normal mode of acquisition contemplated under the Act shows that existence of urgency or unforeseen emergency though is a condition precedent for invoking

Section 17 (4), that by itself is not sufficient to direct the dispensation with Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry. If that was not the intention of the legislature, then the latter part of Section 17 (4) would not have been necessary and the legislature in Sections 17 (1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency Section 5-A inquiry will be dispensed with automatically. But then that is not the language of the section. Although it is possible in a given case that the urgency under Section 17 (1) or the unforeseen emergency under Section 17 (2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation with the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17 (1) and (2) of the Act.

2. The limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17 (4) of the Act. Therefore, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5-A"

In the second case, a Division Bench of the Supreme Court referred to some of the earlier judgments including the judgment of **Narayan Govind Gavate v. State of Maharashtra** and held as under:

"Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power, as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e., whether taking

possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated.

"Urgency" for invoking of Section 17 of the Act should be one arising naturally out of circumstances, which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse or gross delay on the part of the acquiring authority. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration. Failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the landowner to raise objections to the acquisition under Section 5-A. However, the position may be different where the delay is caused or occasioned by the landowner himself."

During the course of arguments, I repeatedly asked the government counsel to support the invoking of urgency clause by respondent No.2, but he could not produce any material to show that the acquisition of land was imminently necessary.

For the reasons stated above, the writ petition is allowed. The acquisition of the petitioner's land is declared illegal and notifications issued under Sections 4 (1) and 6 are quashed insofar as the same relate to the petitioner's land.

G.S. SINGHVI, CJ

June 07, 2006

Svs/GRR